

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Stuttgart
612 South College Street
Stuttgart, AR 72160

LIS No. 21 - **035**
Permit No. AR0034380 (expired) and
Permit No. ARR000670 (expired)
AFIN 01-00214

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order ("Order") is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the City of Stuttgart (Respondent) and the Division of Environmental Quality¹ (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates a wastewater treatment facility ("facility") located at 1011 West 10th Street, Stuttgart, Arkansas County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed ditch, thence to King Bayou, thence to Bayou Meto, thence to the Arkansas River in Segment 3B of the Arkansas River Basin.

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
4. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).
5. In accordance with 40 C.F.R. § 122.26(c), as adopted by APC&EC Rule 6, dischargers of stormwater associated with industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(i-ix, xi), are required to obtain coverage under the NPDES Industrial Stormwater General Permit ARR000000 or an individual permit.
6. DEQ is authorized under the Arkansas Water and Air Pollution Control Act ("Act") to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.
7. Ark. Code Ann. § 8-4-217(a)(3) provides:
 - (a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].
8. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any rule or permit issued pursuant to the Act.
9. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), "[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

10. DEQ issued NPDES Permit Number AR0034380 ("NPDES Permit") to Respondent on January 29, 2015, with an effective date of February 1, 2015, and an expiration date of January 31, 2020. DEQ issued a NPDES Permit Modification to Respondent on August 14, 2015, with an effective date of September 1, 2015, and an expiration date of January 31, 2020.

11. DEQ issued the NPDES Industrial Stormwater General Permit, ARR000000, with an effective date of July 1, 2014, and an expiration date of June 30, 2019. DEQ issued a renewal of the NPDES Industrial Stormwater General Permit with an effective date of July 1, 2019, and an expiration date of June 30, 2024.

12. DEQ issued Industrial Stormwater General Permit coverage to Respondent for discharge of stormwater into waters of the state pursuant to the NPDES Industrial Stormwater General Permit, Permit Tracking Number ARR000670 ("Stormwater Permit"), with a coverage date of July 1, 2014, and an expiration date of June 30, 2019.

Failure to Timely Renew Permit AR0034380

13. Part III, Section D, Condition 10 of the NPDES Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the permit if the activity regulated by the permit is to continue after the expiration date.

14. Respondent has operated this facility beyond the expiration date of the current permit, January 31, 2020.

15. On February 6, 2019, and May 3, 2019, Respondent was notified by letter that the NPDES Permit would expire on January 31, 2020, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than August 4, 2019.

16. On July 12, 2019, Respondent submitted a NPDES Permit renewal application to DEQ. On July 16, 2019, DEQ notified Respondent by letter that the NPDES Permit renewal application was incomplete.

17. On August 15, 2019, and August 20, 2019, Respondent submitted additional information. On August 22, 2019, DEQ notified Respondent by letter that the NPDES Permit renewal application was administratively complete on August 20, 2019.

18. The complete NPDES Permit renewal application was not received by August 4, 2019. Failure to submit the Permit renewal application by August 4, 2019, is a violation of Part III, Section D, Condition 10 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

19. Respondent failed to submit a complete permit renewal application at least 180 days prior to the expiration date of the NPDES Permit. Therefore, Respondent's NPDES Permit was not administratively continued pursuant to APC&EC Rule 6.201, and Respondent has been operating without a permit since February 1, 2020 in violation of APC&EC Rule 6.106(E) and Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

Failure to Renew Coverage Under the NPDES Industrial Stormwater General Permit

20. Part 2 Condition 2.2 of the Stormwater Permit requires Respondent to submit a complete Recertification Notice of Intent (RNOI) no later than June 30, 2019, in order to maintain permit coverage for the regulated activity.

21. On December 31, 2018, DEQ notified Respondent by letter that Respondent's coverage under the NPDES Industrial Stormwater General Permit would expire on June 30, 2019, and that in order to continue the regulated activity, a complete RNOI must be submitted no later than June 30, 2019.

22. On January 14, 2019, Respondent submitted a RNOI and certified that the facility qualified for the No-Exposure Exclusion.

23. On April 12, 2019, DEQ notified Respondent by letter that the February 1, 2018 inspection of the facility cited extensive scrap metal, machinery, equipment, spilled materials, and solid waste at the facility that is exposed to stormwater, and therefore, the facility is not eligible for the No Exposure Exclusion. The letter further stated that in order to continue the regulated activity, a RNOI for stormwater coverage and stormwater pollution prevention plan (SWPPP) must be submitted to DEQ no later than June 30, 2019.

24. On September 20, 2019, DEQ notified Respondent by letter that the RNOI and SWPPP had not been received by June 30, 2019, and that permit coverage for this facility under the Industrial Stormwater General Permit had expired.

25. The complete RNOI and SWPPP were not received by July 1, 2019. Failure to submit the RNOI and SWPPP by July 1, 2019, is a violation Part 2 Condition 2.2 of the Stormwater Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

26. Respondent has been discharging stormwater associated with industrial activity beyond the expiration date of the Stormwater Permit in violation of 40 C.F.R. § 122.26(c), as adopted by APC&EC Rule 6 and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

Compliance Inspection

27. On December 12, 2019, DEQ conducted a Compliance Evaluation Inspection, SSO/Collection System Inspection, and Industrial Stormwater Inspection of the facility. The inspection revealed the following violations:

- a. Respondent failed to submit non-compliance reports (NCR) for effluent limitation exceedances with Discharge Monitoring Reports. Failure to submit NCR with each effluent limitation exceedance is a violation of Part III, Section D, Condition 7 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent failed to sample and analyze the influent in 2018 for Carbonaceous Biochemical Oxygen Demand (CBOD5) and Total Suspended Solids (TSS) to demonstrate the percent removal for CBOD5 and TSS. Failure to monitor the influent to demonstrate compliance with the required removal efficiency is a violation of Part II, Condition 2 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent failed to properly operate and maintain the facility as required by Part III, Section B, Condition 1.A of the Permit, as evidenced by the following observations:
 - 1. Influent flowmeter was inoperable;
 - 2. Scraper drive for the north final clarifier was inoperable;
 - 3. Equalization basin contained excessive sludge;
 - 4. Emergency contact information was not posted at lift stations; and
 - 5. SCADA at main lift stations was inoperable.

These failures are a violation of Part III, Section B, Condition 1.A of the Permit and are therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

- d. Respondent employs only one (1) licensed operator at the facility. Based on the operation and maintenance failures identified above, Respondent is not employing adequate operating staff for the facility. Failure to employ adequate operating

staff for the facility is a violation of Part III, Section B, Condition 1.B of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

28. On March 19, 2020, DEQ notified Respondent of the inspection results and requested a written response for each violation cited in the report be submitted to DEQ by April 2, 2020. Respondent did not submit the requested response by April 2, 2020. On May 21, 2020, DEQ again notified Respondent of the inspection results and requested a written response for each violation cited in the report be submitted to DEQ by June 4, 2020. Respondent submitted a response dated June 3, 2020.

29. On December 15, 2020, DEQ notified Respondent by letter that the documentation submitted to date in response to DEQ's notification of the inspection results did not adequately address each violation documented in the December 12, 2019 inspection report.

Effluent Violations

30. On December 16, 2019, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the NPDES Permit. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the NPDES Permit from August 1, 2018, through October 31, 2019:

- a. Four (4) violations of Total Suspended Solids;
- b. Three (3) violations of pH;
- c. One (1) violation of Carbonaceous Biochemical Oxygen Demand;
- d. One (1) violation of Total Residual Chlorine; and
- e. Eight (8) violations of Fecal Coliform Bacteria.

31. Each of the seventeen (17) discharge limitation violations listed above constitutes a separate permit violation for a total of seventeen (17) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

32. On December 16, 2019, DEQ notified Respondent by letter of the effluent limit violations and recommended that Respondent consult with a professional engineer to develop a corrective action plan to address the effluent violations.

33. On December 2, 2020, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the NPDES Permit. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the NPDES Permit from November 1, 2019 through October 31, 2020:

- a. Three (3) violations of Total Suspended Solids;
- b. Three (3) violations of Ammonia Nitrogen;
- c. One (1) violation of Carbonaceous Biochemical Oxygen Demand;
- d. Two (2) violations of Total Residual Chlorine; and
- e. Five (5) violations of Fecal Coliform Bacteria.

34. Each of the fourteen (14) discharge limitation violations listed above constitutes a separate permit violation for a total of fourteen (14) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

35. On December 15, 2020, DEQ notified Respondent by letter of the effluent limit violations identified during the review conducted on December 2, 2020.

Sewer Overflows

36. On January 10, 2020, DEQ conducted a review of Sanitary Sewer Overflow (SSO) Reports submitted by Respondent in accordance with the NPDES Permit. The review revealed

that Respondent reported three (3) SSOs during the period of January 1, 2017, through December 31, 2019, totaling 600,000 gallons.

37. Each SSO constitutes a separate violation of Part II Condition 5 of the Permit for a total of three (3) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

CAO LIS 18-092 Non-Compliance

38. DEQ and Respondent executed Consent Administrative Order LIS 18-092 (CAO LIS 18-092) on November 21, 2018, to address violations of Part I, Section A of the NPDES Permit and violations of the NPDES Permit documented in the February 1 2018 inspection of the facility. DEQ assessed a civil penalty of Ten Thousand Dollars (\$10,000.00) for the aforementioned violations and conditionally suspended Five Thousand Dollars (\$5,000.00) of the civil penalty. DEQ agreed to dismiss the suspended penalty of Five Thousand Dollars (\$5,000.00) if Respondent complied fully with the terms of CAO LIS 18-092.

39. On June 6, 2019, DEQ notified Respondent by certified letter that Respondent had failed to comply with the terms of CAO LIS 18-092. DEQ instructed Respondent to submit the reports required by CAO LIS 18-092 to DEQ by June 28, 2019. Respondent did not respond to DEQ's certified letter.

40. On September 29, 2020, DEQ notified Respondent by certified letter that the documentation required by CAO LIS 18-092, specifically the monthly progress reports, the Sanitary Sewer Overflow Response Plan, evidence of compliance with the Corrective Action Plan, and a final compliance report, had not been received by DEQ. Respondent's failure to provide the documentation required by CAO LIS 18-092 is a violation of CAO LIS 18-092. DEQ requested that Respondent submit the required documentation within twenty (20) calendar days of receipt of the certified letter. Respondent received the certified letter on October 5, 2020,

making the response due on October 20, 2020. On December 2, 2020, DEQ received a response from Respondent.

41. On December 2, 2020, DEQ enforcement analyst, Myrl V Lawrence Jr., contacted Respondent's Wastewater Supervisor, Tommy Lawson, by phone to discuss the response to DEQ's letter, effluent violations, unsubmitted non-compliance reports, and the status of facility repairs.

42. On December 15, 2020, DEQ notified Respondent by letter that the documentation submitted in response to DEQ's notification of CAO LIS 18-092 non-compliance was insufficient to satisfy the requirements of CAO LIS 18-092. Specifically, the sanitary sewer response plan has not been received, sludge removal has not been completed, and final compliance was not achieved and certified by the final compliance date.

43. Respondent failed to comply fully with the terms of CAO LIS 18-092. The suspended civil penalty of Five Thousand Dollars (\$5000.00) is due and payable to DEQ.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. CAO LIS 18-092 shall be closed upon the effective date of this Order.
2. On or before the effective date of this Order, Respondent shall submit a response that adequately addresses the violations cited in the December 12, 2019 inspection
3. On or before the effective date of this Order, Respondent shall submit to DEQ a complete Notice of Intent and SWPPP to obtain coverage under the NPDES Industrial Stormwater General Permit.
4. Respondent shall comply with the NPDES Industrial Stormwater General Permit, ARR000000, with the effective date of July 1, 2019, until DEQ issues a Notice of Coverage to Respondent.

5. Respondent shall comply with the requirements of the previous NPDES Permit, AR0034380, which expired on January 31, 2020, until DEQ issues a new NPDES Permit to Respondent.

6. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Corrective Action Plan (CAP) and milestone schedule, prepared and stamped by a Professional Engineer licensed in the state of Arkansas, that will, at minimum, include the methods and best available technologies that will be used to correct the violations identified in the Findings of Fact of this Order and prevent future violations. The CAP shall also include a reasonable milestone schedule with a date of final compliance no later than June 30, 2022. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The terms of the approved CAP, milestone schedule, and final compliance date shall be fully enforceable as terms of this Order.

7. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit a staffing evaluation and operations plan prepared and stamped by a Professional Engineer licensed in the state of Arkansas that will, at minimum, include:

- a. Current staffing by title, licensure, and duties;
- b. Identification of key systems for which onsite operation and monitoring is necessary at all times;
- c. Recommendations for staffing requirements and duties by wastewater licensure level and onsite schedule during 24-hour operation of the facility;

d. Identification of current technology emplaced to alert staff remotely of facility failures or operation issues, including detailed analysis of both operable and inoperable systems; and

e. Operational cost analysis of current, preferred, and optimal staffing requirements.

8. On or before the fifteenth (15th) day of the month of each calendar quarter following the effective date of this Order, and continuing until this Order is closed, Respondent shall submit quarterly progress reports detailing staffing schedules and progress made towards compliance with the milestones of the approved CAP and include photographic evidence of the work being completed.

9. On or before June 30, 2022, Respondent shall submit a final compliance report prepared and stamped by a Professional Engineer licensed in the state of Arkansas certifying compliance with the Permit and that all actions identified in the approved CAP and milestone schedule have been completed and that the facility is in compliance with the permit.

10. In compromise and full settlement of the violations specified in the Findings of Fact, , Respondent agrees to pay a civil penalty of Eight Thousand Eight Hundred Dollars (\$8800.00), of which Five Thousand Dollars (\$5000.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Five Thousand Dollars (\$5000.00) shall be DISMISSED by DEQ. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Eight Thousand Eight Hundred Dollars (\$8800.00) shall be payable immediately to DEQ. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division
5301 Northshore Drive

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

11. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

12. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so notify DEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified in this Order. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

13. DEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period, but in no event longer than the period of delay resulting from

such circumstances. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

14. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

15. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule 8, this matter is subject to being reopened upon Commission initiative, or in the event a petition to set aside this Order is granted by the Commission.

16. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

17. This Order has been reviewed and approved by the City Council of Respondent in a duly convened meeting with a quorum present. See copy of [meeting minutes or resolution] attached as Exhibit A.

18. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to sign this Order on behalf of Respondent. See Exhibit A.

19. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty as set forth in this Order. See Exhibit A.

SO ORDERED THIS 5th DAY OF May, 2021.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Stuttgart

BY: Becky Burgess
(Signature)

Becky Burgess
(Typed or printed name)

TITLE: Interim Mayor

DATE: 3/30/2021

RESOLUTION NUMBER 2021- 06

WHEREAS, the City Council of the City of Stuttgart, Arkansas, has previously authorized and entered agreements with Arkansas Division of Environmental Quality (DEQ) for permits pertaining to the operation of the City wastewater treatment facility and discharge thereof; and

WHEREAS, said permits expired and the City is out of compliance with certain factors in the previous agreements and law; and

WHEREAS, a Consent Administrative Order (CAO) has been proposed by DEQ and reviewed by the City Council.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STUTTGART, ARKANSAS:

1. After due deliberation and consideration of the findings of fact the Council has determined that the interests of the City, its residents and occupants will be best served by approving the Consent Administrative Order and the agreements therein.
2. Acting Mayor Becky Burgess and Alli Holbert as City Clerk should be and hereby are authorized to execute and deliver the Consent Administrative Order on behalf of the City.
3. Furthermore the Mayor and City Clerk are hereby are authorized to expend funds for compliance activities and payment of a civil penalty required by the Consent Administrative Order.

THIS RESOLUTION PASSED AND APPROVED this 20 day of April, 2021.


BECKY BURGESS, INTERIM MAYOR

ATTEST:


ALLI HOLBERT, ACTING CITY CLERK

Resolution prepared by
M. Elizabeth Skinner, City Attorney.

